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September 10, 1993

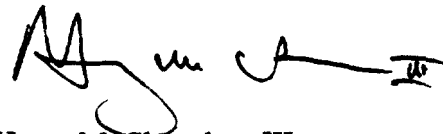
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex parte Presentation
GEN Docket No. 90-314
ET Docket No. 92-100

Dear Mr. Caton:

Pursuant to 1.1206(a)(1) of the Commission's rules, I hereby submit two copies of the attached document which was the subject of an ex parte presentation. This submission is on behalf of Cincinnati Bell, Inc., Denver and Ephrata Telephone Company, Illinois Consolidated Telephone Company, Lufkin-Conroe Telephone Company, North Pittsburgh Telephone Company, Peoples Telephone Company and Southeast Telephone Company.

Respectfully submitted,



Harry M. Shooshan III

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Attachments (2)

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THE IMPORTANCE OF
LOCAL EXCHANGE CARRIER ENTRY
INTO PERSONAL COMMUNICATIONS
SERVICES

HARRY M. SHOOSHAN III

AND

CALVIN S. MONSON

SEPTEMBER 9, 1993

THE IMPORTANCE OF LOCAL EXCHANGE CARRIER ENTRY INTO PERSONAL COMMUNICATIONS SERVICES

EXECUTIVE SUMMARY AND INTRODUCTION

Emerging personal communications services (PCS) hold great promise. These new radio-based technologies can be used to augment the reach of and the capabilities available on existing wireline and cellular networks. Many imaginative PCS applications are being developed, all of which have the potential to improve productivity and enhance the quality of life. By providing a wireless information platform, PCS technology can further transform telephone service from a voice service connecting locations to a multimedia link between people wherever they may be. Local exchange carriers (LECs) are in a unique position to help facilitate this transformation.

However, some potential PCS licensees are advocating that LECs be restricted or prohibited altogether from holding PCS licenses in their telephone service areas. In this paper we identify some substantial harms in so restricting the LECs. **LEC entry into PCS has important benefits, particularly for the smaller LECs such as those sponsoring this position paper.** Access to the most efficient technologies is especially important if these companies are to provide service to high-cost areas (both rural and urban) in their service territories. In addition, these LECs need access to PCS technologies to be able to compete and to meet their universal service obligations. With highly concentrated service territories, the impact of competition can be much more immediate and severe on these LECs than on larger LECs that serve more varied markets and whose service territories are regional or even national in scope.

The Federal Communications Commission (FCC) has a number of options available to it to ensure that PCS will be provided effectively and competitively, and that do not involve restricting LECs from participating in offering PCS. These options include creating more, rather than fewer, blocks of spectrum and/or allocating more spectrum to PCS. Such steps would make more licenses available and permit all entities to bid on those licenses without restriction.

If, nevertheless, there are some restrictions placed on LECs, we argue that any restriction not apply to LECs that have only a noncontrolling interest in the cellular licenses within their service territories. In addition, LECs should not be excluded from PCS because of their wireline operations. Whatever potential problems there might be with permitting LECs to hold PCS licenses within their service areas would result from *control* of the cellular operation, not from holding a minority ownership interest in that enterprise. Those LECs that took minority (noncontrolling) positions in cellular partnerships to further the Commission's objectives of getting cellular service up and running should not now be penalized for having done so. Any mismatch between cellular service areas and PCS service areas (with cellular areas likely being a small fraction of PCS areas) should be taken into account as well. A LEC with a noncontrolling interest in a cellular service area should not be restricted from participating in offering PCS in a much larger geographic area. Lastly, there is precedent in other FCC ownership rules for focusing on control.

THE IMPORTANCE OF LEC ENTRY

LECs should be permitted to use PCS technology for a full range of applications. Precisely because it is impossible to determine with any degree of certainty what PCS will become, it is important for a variety of entities, including LECs, to have access to the technology. Moreover, because LECs bear a unique obligation to provide universal service, their participation in developing PCS applications is especially important. In fulfilling this obligation to serve, LECs must be able to use the most efficient technology. PCS technologies can play an important role in providing telecommunications access. The FCC recognized this in its Notice. First, it noted that

. . . there may be significant economies of scope between PCS and the LEC wireline network which would not be realized if LECs were prohibited from providing PCS service within their current wireline service areas. For instance, LECs may naturally desire to develop their networks using wireless tails or wireless loops wherever they are more economical than wireline connections.¹

¹FCC, *In the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services*, Notice of Proposed Rulemaking and Tentative Decision (adopted July 16, 1992, released Aug. 14, 1992) [Hereafter cited as FCC PCS Notice], ¶ 73.

Also, it tentatively concluded, after listing other reasons as well, that "there is a strong case for allowing LECs to provide PCS within their respective service areas."²

It is especially costly for LECs to provide wireline connections in some rural areas and in some inner city urban areas. In rural areas, the costs of laying wire to remote homes or businesses may be prohibitive or require substantial subsidies. PCS technology could provide "the local loop" in such locations. In instances where wireline facilities have already been installed, they are often older plant and in need of replacement or extensive maintenance. It is frequently very costly to gain access to maintain existing wireline facilities or to install new facilities in these areas. PCS technologies offer an attractive alternative to wireline facilities in high-cost areas and could well lower the cost of providing basic telephone service at a reasonable price to all.

Another characteristic of smaller LECs is that they serve highly concentrated service territories. They lack the geographic diversity that the larger LECs enjoy, serving large regions or maintaining a national presence). As a result, the smaller LECs risk an immediate and severe impact from competitive entry. Should a competitor decide to enter one of these relatively small, concentrated service territories and sign up just a few of the larger customers, the LEC could suffer a substantial impact. Thus, smaller LECs need access to PCS technologies to remain competitive with cable companies, CAPs or other entities that might hold PCS licenses in their service areas. Whether the application is wireless Centrex/PBX to serve a hospital or office building or whether wireless PCS technologies are used to provide service quickly to a new housing project in a previously undeveloped location, LECs also need to be able to offer the services that customers will demand in a competitive environment.

THE FCC CAN ALLOCATE SPECTRUM TO ACHIEVE COMPETITION AND STILL PERMIT LEC ENTRY

The FCC has the ability to allocate spectrum for PCS in a manner that facilitates competition, while permitting LECs to participate fully in PCS. The FCC can create a sufficient number of licenses such that LECs can enter along with several others. This would

²FCC PCS Notice, ¶ 75.

have the benefit of allowing LECs to use PCS technologies and of seeing that PCS is available from several providers, permitting market forces to ensure that PCS will be provided effectively and competitively.

The FCC has a number of options it can pursue that do not involve excluding LECs from participating in offering PCS. It can allocate a smaller amount of spectrum per license, thereby allowing for additional licenses. For example, within the spectrum the FCC has currently identified for PCS, it could license five blocs of 18 MHz each. This would provide ample spectrum for each licensee while allowing competition. The Commission could also allocate more spectrum for PCS. This would permit an even greater number of licenses or larger blocs depending on how the FCC makes that trade-off. The FCC can allow LEC entry and can allow entry by several other providers. The point is that the Commission should not create scarcity and then point to it as a basis for excluding the LECs from full participation in PCS. As the FCC has already stated: "It is our goal to allocate sufficient spectrum and establish rules to allow the widest possible range of such services."³ This range of services certainly should be seen as wide enough to encompass letting LECs use PCS technologies to meet their obligation to provide universal service at reasonable price as well as to develop new applications that are both complements to and substitutes for the wireline network.

**ANY RESTRICTIONS SHOULD NOT APPLY TO LECs THAT HAVE ONLY
A NONCONTROLLING INTEREST IN THE CELLULAR LICENSE WITHIN
THEIR SERVICE TERRITORY**

If the FCC should decide to restrict or limit LEC entry into PCS because of cellular interests, the Commission should distinguish between LECs that *control* existing cellular operations on the one hand and those LECs that have only a noncontrolling interest in a cellular license. In the first place, the FCC should recognize that various LECs approached cellular in very different fashions. Some, primarily the RBOCs and GTE, sought control of

³FCC PCS Notice, ¶ 28.

the wireline franchises, while others took minority positions in those franchises and are essentially investors.⁴

The problem being addressed, if there is one, stems from *control* of the cellular operation, not from having a minority stake in the enterprise. The argument supporting a restriction on the LECs is that common ownership of PCS and cellular will result in less vigorous competition between the two services. However, the relevant issue is whether a LEC exercises control over the cellular operation, not the mere fact that it has an ownership interest. In the first place, the ownership interest may be nonvoting, such as North Pittsburgh Telephone Co.'s 3.6 percent interest in the Pittsburgh MSA. Alternatively, even though an ownership interest may provide for voting rights, such rights are limited as to effectiveness and to the issues covered thereunder. In addition, the interest is generally small enough that the LEC cannot exercise any control over the operations of the system.

The incentives of a LEC holding a noncontrolling interest in a cellular franchise are very different from those of the controlling party. First, a LEC with a noncontrolling interest in cellular lacks the ability to pull its competitive punches. Second, a LEC with a noncontrolling interest in cellular wouldn't want to pull its competitive punches. It would do better by aggressively growing its PCS business, even if some of that growth comes at the expense of its minority interest in the cellular business. Such a LEC keeps every dollar of PCS revenues as opposed to some small fraction of cellular revenues.

The Commission should also take into account the fact that many of the smaller LECs took minority (noncontrolling) positions in cellular partnerships to further the Commission's objectives of getting cellular service up and running. When the FCC set aside cellular franchises for wireline providers, it did so because it thought the LECs possessed the ability

⁴Some examples of these minority positions are Lufkin-Conroe's 3 percent interest in the Houston MSA (GTE has 79.2 percent), Southeast Telecom's 2.46 percent interest in the Milwaukee MSA (Ameritech has 59.98 percent), North Pittsburgh's 3.6 percent interest in the Pittsburgh MSA (Bell Atlantic has 92.8 percent), Denver and Ephrata's 9.2 percent interest in the Harrisburg, York, and Lancaster MSAs (Centel/Sprint has 86.76 percent), Illinois Consolidated's 26 percent interest in the Springfield/Decatur and Champaign/Urbana MSAs (Ameritech has 51 percent) and Cincinnati Bell's 45.01 percent interest in the Cincinnati MSA (Ameritech has 52.72 percent).

to get cellular service up and running quickly.⁵ To facilitate the FCC's objective and to avoid the costly and time-consuming comparative hearings that would have been required in the absence of agreements, many LECs entered into "settlements" with neighboring LECs and established partnerships arrangements for operating the wireline cellular systems. Had these agreements not been reached, there would have been substantial delay in the availability of cellular, not to mention a drain on the FCC's resources in administering the comparative hearings. LECs that "settled" and took a minority interest in a cellular partnership with other LECs did so to cooperate with the FCC. They should not be penalized now because of their cooperation then.

The likely mismatch between cellular service areas and PCS service areas (with cellular areas being small fractions of PCS areas) should be taken into account as well. A LEC with a noncontrolling interest in a cellular service area should not be restricted from participating in offering PCS in a much larger geographic area. It is difficult to imagine why a LEC would not compete vigorously with cellular using PCS services because it had a minority interest in a cellular franchise that covered only a small portion of its PCS service area. That would truly be a case of the tail wagging the dog and a LEC that did so would be acting against its own interests.

Lastly, there is precedent in other FCC rules for making a distinction between a mere ownership interest and control. For example, the FCC's rules on broadcast ownership (ownership of broadcasting stations by other broadcasting stations or by newspapers) bar only "cognizable" interests. Where a single holder owns more than 50 percent of the voting stock, no minority interest is cognizable.⁶

CONCLUSION

LECs need access to PCS technologies to fulfill their mandate to provide universal service and to provide the services customers will demand in a competitive environment. For smaller LECs this is all the more true. The FCC can ensure that PCS will be provided

⁵FCC, *In the matter of Inquiry Into the Use of Certain Frequency Bands for Cellular Communications Systems; and Amendment of Rules Relative to Cellular Communications Systems*, Report and Order (adopted Apr. 8, 1981, released May 4, 1981), 46 Fed. Reg. 27,655, at 27,663.

⁶47 C.F.R. § 73.3555.

effectively and competitively while not restricting LECs from participation. These goals can be achieved by making more licenses available and/or allocating more spectrum to PCS.

Thus, there is no need to restrict LECs from bidding on PCS licenses. However, if some restrictions are placed on LECs because of LEC ownership of cellular, any restrictions should not apply to LECs that have only a noncontrolling interest in cellular licenses. Any potential problems with permitting LECs to hold PCS licenses would result from *control* of cellular firms, not from having a minority interest. If it restricts ownership, the FCC should follow its past decisions and make a distinction between a mere ownership interest and control.